

Appl. No. 10/671,103
Amdt. dated September 9, 2005
Reply to Office action of March 9, 2005
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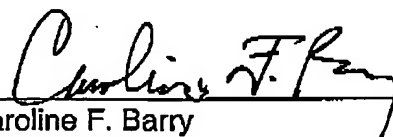
REMARKS

Claims 50-54 and 63-64 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,972,846 issued to Owens et al. Claim 50 is amended to include "a third layer of porous PTFE adjacent to at least a portion of the second layer, the third layer having a fibril length adapted to selectively promote tissue in-growth". Withdrawal of the rejection to the claims under 35 U.S.C. §102(b) is respectfully requested.

Claims 58, 66, 68 and 69 are rejected under 35 U.S.C. §103(a) as being unpatentable over Owens further in view of U.S. Patent No. 4,573,480 issued to Hirschberg. The claimed invention relates to a first layer "to bleed gas away from the at least one surface of the defibrillation electrode," a second layer that "prevent[s] substantially all tissue in-growth," and a third layer that "selectively promote[s] tissue in-growth, the third layer of porous PTFE has a thickness less than or equal to 50 microns." Applicants respectfully assert that the USPTO has improperly relied on hindsight analysis to combine the cited references. Specifically, the USPTO applied limitation-by-limitation analysis to reject the claimed invention. Limitation-by-limitation analysis is prohibited under In re Dembicziak, 175 F.3d 994, 1000 (Fed. Cir. 1999). In particular, the USPTO is unable to cite to any reference that teaches or suggests the combination of at least three layers in which a first layer bleeds away gas, a second layer prevents tissue in-growth, and a third layer that promotes tissue growth. Withdrawal of the instant rejections and issuance of a Notice of Allowance is requested.

Respectfully submitted,

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Date


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